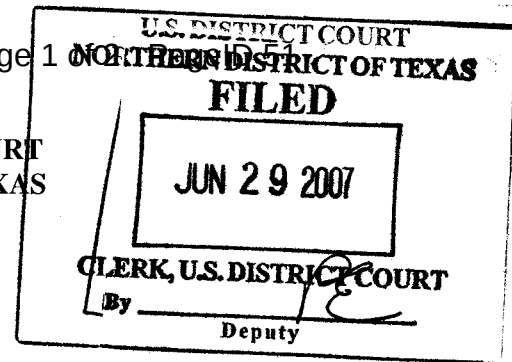


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



LESTER HENRY ROBINSON, #23967-077,)
Defendant/Movant,)

vs.)

UNITED STATES OF AMERICA.)

USDC 3:07-CV-0037-D

RECOMMENDATION REGARDING CERTIFICATE AS TO APPEALABILITY

A Notice of Appeal has been filed in the above captioned action in which the District Court has entered a final order in a proceeding pursuant to 28 U.S.C. § 2255. Pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the Magistrate Judge recommends as follows:

IFP STATUS:

- ☒ the party appealing should be GRANTED leave to proceed *in forma pauperis*.
☐ the party appealing should be DENIED leave to proceed *in forma pauperis*
for the following reason(s):
☐ the Court recommends that the District Court certify, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915(a)(3), that the appeal is not taken in good faith;
☐ the person appealing is not a pauper;
☐ the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and/or 28 U.S.C. § 1915(a)(1) as ordered by the Court.
(See Notice of Deficiency and Order filed on _____.)
☐ the party appealing paid the appellate filing fee on _____.

COA:

- ☐ a Certificate of Appealability should be GRANTED. (See issues set forth below).
☒ a Certificate of Appealability should be DENIED. (See reasons stated below).

REASONS FOR DENIAL: For the reasons stated in the Findings, Conclusions and Recommendation of the United States Magistrate Judge, filed on March 5, 2007, which were accepted by the District Court on April 4, 2007, Movant has failed to demonstrate that reasonable jurists would find it debatable whether the District Court erred in dismissing the § 2255 motion as second or successive. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

DATE: June 28, 2007


UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LESTER HENRY ROBINSON, #23967-077,)
Defendant/Movant,)

vs.)

USDC 3:07-CV-0037-D

UNITED STATES OF AMERICA.)

ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:

IFP STATUS:

- ☒ (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
- ☐ () the party appealing is DENIED *in forma pauperis* status on appeal for the following reasons:
- ☐ () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court incorporates by reference the Magistrate Judge's Findings and Recommendation filed on _____. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).
- ☐ () the person appealing is not a pauper;
- ☐ () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order filed on _____).
- ☐ () the party appealing paid the appellate filing fee on _____.

COA:

- ☐ () a Certificate of Appealability is GRANTED on the following issues: _____
- ☒ (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation filed in this case on March 5, 2007, in support of its finding that Movant has failed to demonstrate that reasonable jurists would find it debatable whether the District Court erred in dismissing the § 2255 motion as successive. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000).

DATE: June 29, 2007


UNITED STATES DISTRICT JUDGE